

# Notice of Allowability

Application No.

09/974,633

Examiner

Steven L. Weinstein

Applicant(s)

PALMER ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 9/28/04 and the Declarations filed 10/2/04 and 11/1/04.
2. ☒ The allowed claim(s) is/are claims 17-24 which have been renumbered claims 1-8, respectively.
3. ☒ The drawings filed on 10/9/01 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 12/6/04.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Steven Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761

## EXAMINER'S AMENDMENT

Claims 1,3,5,6,8,9,10, and 11 have been cancelled and new claims 17-24 have been added as follows:

17. A marking pen for decorating edible food including soft moist frosting or other comparably soft food having a determinable instantaneous yield point without substantially deforming said edible food even when said edible food is said soft, moist frosting or other comparably soft food, said marking pen comprising, in combination:

a container defining an interior containing a colored, edible aqueous liquid decorating substance for decorating said edible food; and

an elongated, highly elastic, highly absorbent, highly flexible nib of integral construction formed of highly porous open cell polymer foam material which has solid, open cell structures of high hydrophilicity, said nib being connected to said container with said nib being hydraulically coupled to said colored, edible aqueous liquid decorating substance, said nib being extremely soft and highly flexible when wetted with said colored, edible aqueous liquid decorating substance, said nib having a porous distal end, a porous nib shaft side wall and a nib interior defining voids in fluid flow communication with the interior of said container and with the pores of said porous distal end and said porous nib shaft side wall for receiving said colored, edible aqueous liquid decorating substance from the container interior and conveying said colored, edible aqueous liquid decorating substance to said porous distal end and said porous nib shaft side wall through said nib interior such that high levels of said colored, edible aqueous liquid decorating substance are present at the outer surface of both said porous distal end and said porous nib shaft side wall for application to said edible food due to contact between said porous distal end or said porous nib shaft side wall and said edible food, said nib readily laterally flexing

when in contact with said edible food, even when said edible food is said soft moist icing or other comparably soft food, prior to the force applied by said nib to said edible food substantially exceeding the instantaneous yield point of said edible food at the location thereon engaged by said nib when pressure is exerted on said edible food by said nib to substantially prevent deformation of said edible food even when said edible food is said soft, moist frosting or other comparably soft food and the pressure exerted is slight during application of said colored, edible aqueous liquid decorating substance to said edible food by said marking pen, flexing of said nib operable to bring the porous nib shaft side wall into engagement with said edible food and substantially conform to a surface of said edible food such that said colored, edible aqueous liquid decorating substance passes through said porous nib shaft side wall and is applied to said edible food by said porous nib shaft side wall without the force applied by said porous nib shaft side wall to the surface of said edible food substantially exceeding the instantaneous yield point of said edible food even when said edible is said soft, moist frosting or other comparably soft food at the location thereon engaged by said porous nib shaft sidewall when said marking pen is used to decorate said edible food and said nib is pulled along the surface of said edible food, said nib flexing laterally and deflecting to weather vane responsive to changes in the direction of said nib as it is pulled and dragged along the surface of said edible food in engagement therewith even when extremely low forces are applied to said nib, said nib utilizing capillary action to carry said colored, edible aqueous liquid decorating substance from the nib interior to the outer surface of said porous nib shaft side wall and porous distal end and to replace said colored, edible aqueous liquid decorating substance transferred from the nib to said edible food and to maintain a high fluid level at said porous distal end and said porous nib shaft side wall, and said

nib responsive to withdrawal of said nib from contact with said edible food to return to its undeflected condition.

18. The marking pen according to claim 17, wherein said open cell polymer foam material is acetalized polyvinyl alcohol.

19. The marking pen according to claim 18, wherein interstitial cells of the acetalized polyvinyl alcohol open cell foam material accommodate said colored, edible aqueous liquid decorating substance.

20. The marking pen according to claim 17, wherein said nib is configured with a concave taper, decreasing in cross-section in the direction of the porous distal end.

21. The marking pen according to claim 17, wherein said open cell polymer foam material has a porosity of from about 88% to about 92%.

22. The marking pen according to claim 17, wherein the average pore size is from about 60 microns to about 300 microns.

23. The marking pen according to claim 17, wherein said open cell polymer foam material has a water absorption rate (percentage of mass) of from about 1,020% to about 1,300%.

24. The marking pen according to claim 17, wherein said open cell polymer foam material has a pore size distribution of from about 30 microns to about 150-400 microns.

The title has been changed to read - - Marking Pen For Decorating Food - -

Steven Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761